Faster than anyone predicted, the Windows universe is fragmenting. Microsoft built us a common platform by committing itself to a big, bulky, backwards-compatible Windows, and now it's stuck with a platform too big and bulky to be useful for a new generation of devices. These gadgets will run happily on any number of narrowly targeted, code-light operating systems, as long as they speak the common language of the Internet. Even Mr. McNealy predicts Windows will have less than 50% of the market by 2002—that is, in ''two or three years.''

This was in the cards before Justice ever filed its antitrust suit. We pointed out here three years ago that if ''the future of computing is a toaster tied to the Internet,'' the ''death struggle of the operating systems'' is over. We're happy to report that Microworkz is calling its non-Windows machine the ''iToaster.''

Pursuing this case any further would be nothing but a gratuitous favor to companies that don't want Microsoft to be allowed even to compete. It's time to pull the plug.

EXHIBIT 1

[From the Investor's Business Daily, August 5, 1999]

CASE CLOSED: LAY OFF MICROSOFT

(By Paul Rothstein)

The government's antitrust case against Microsoft continues at a snail's pace. A decision by a U.S. judge is not expected until late this year. In the meantime, eight average citizens in Bridgeport, Conn., have already offered their view in the contest of a lesser known but perhaps equally important antitrust case also involving Microsoft.

Bristol Technology is a small Connecticut-based software company that offers a product allowing users to run Windows-based applications in other operating system environments, including various flavors of Unix. Bristol sued Microsoft in federal court last year, asserting 12 claims for relief under state and federal antitrust laws and seeking as much a $263 million in damages.

Like the government, Bristol alleged Microsoft had an illegal monopoly in the PC operating system market. The suit claimed Microsoft had used it to try to monopolize two other markets—operating system software for ''technical workstations'' and for ''departmental servers.''

At trial, Microsoft presented a compelling case based on hard facts and evidence illustrating stiff competition from the likes of multibillion-dollar companies like IBM and Sun Microsystems. The competition historically has charged consumers much more than Microsoft does. Microsoft's entry in 1993 with Windows NT actually generated significant cost savings for consumers and increased the level of innovation and competition.

Bristol's hometown jury took less than two days to agree with Microsoft. In a unanimous verdict, the jury quickly dismissed every one of the antitrust charges. It upheld only a minor state claim for which the jury awarded Bristol $1 in ''damages.''

Although the specific facts are different, basic similarities exist between the Connecticut case and the government's antitrust suit in D.C.

In both cases, the plaintiffs argued that Microsoft possesses an illegal monopoly with its Windows operating system. Bristol claimed Microsoft's control of the operating system market was so strong and so permanent that any company wishing to produce applications that run on operating systems, must necessarily do Microsoft's bidding. The Justice Department charged that this alleged power was used to thwart competition from Netscape

In both cases, Microsoft showed that the volatile computer industry is not and cannot be dominated by a single player, even one whose product appears to enjoy widespread popularity.

Software is so easy to create that anyone with a home PC and a few hundred dollars can enter the market as a viable competitor to IMB, Sun Microsystems, Hewlett-Packard, Compaq and, yes, even Microsoft.

Just ask Linus Torvalds. He's the creator of the increasingly popular server operating system software called Linux. Torvalds created Linux in the early 1990s in his college dorm room at age 19. Today, the latest International Data Corp. data show Linux with nearly 20% of the server software market and growing.

The Connecticut lawsuit couldn't show any harm to consumers or competition. The record supported Microsoft's position—that its efforts to provide Windows NT has increased choice, increased features and dramatically reduced prices for customers seeking to use high-end PCs and servers.

Fortunately for all of us, the jury in the Bristol case recognized that antitrust laws are designed to protect competition, not competitors.

It is unfortunate that the Department of Justice, joined by some state attorneys general, does not share that view. Indeed, another lesson from the Bristol case is that the selective and subjective use of out-of-context e-mail snippets, while perhaps good theater, does not prove an antitrust case.

Seen in this light, the Bristol jury's verdict ought to concern the government. Why? If the Bristol verdict illustrates anything, it's that eight everyday consumers can recognize the intense level of competition that exists in today's software industry and the obvious benefits of low prices and better products for consumers.

Given that reality, the government's long battle against America's most admired company is a waste of taxpayer money. It's a flawed proceeding for which consumers clearly have no use.

By issuing a verdict reaffirming the pro-competitive and pro-consumer nature of today's software industry, the Connecticut jury signaled its support of continued innovation and free-market competition.

Paul Rothstein is a professor of law at Georgetown University and a consultant to Microsoft who has studied antitrust law under a U.S. Government Fulbright grant.

CRANBERRY AMENDMENT TO AGRICULTURE APPROPRIATIONS BILL

Mr. KOHL. Mr. President, I would like to clarify that during the passage of the Agriculture Appropriations bill last night, S. 1233, Senator GORDON SMITH's amendment on cranberry marketing was adopted without the proper co-sponsorship. Mr. SMITH's cranberry marketing amendment, begun by Senator WYDEN, was to be co-sponsored by Senator WYDEN and myself, as well as Senators FEINGOLD, KERRY, KENNEDY, and MURRAY.

Mr. WYDEN. I Thank Senator KOHL. I appreciate the clarification and all his hard work on this issue of importance to cranberry growers across the country. When we go to conference on this bill, I will continue to support this amendment.

DEPARTMENT OF DEFENSE AUTHORIZATION ACT CONFERENCE REPORT

Mr. REED. Mr. President, I rise tonight to express my regret that I am unable to sign the conference repot on the Fiscal Year 2000 Department of Defense Authorization Act.

This was my first year as a member of the Armed Service Committee. I want to commend Chairman WARNER and Senator LEVIN for their leadership and commitment to our nation's defense. The committee provided ample opportunity for me to learn about the issues, participate in the discussion, and express my views. I believe that the process which created this bill was, overall, thoughtful and fair.

This bill has many excellent provisions. It provides for a significant increase in defense spending but allocates the funds wisely. In creases funds for research and development which we must invest in if we are to remain the world's finest fighting force. It adds additional funds to the service's operation and maintenance accounts which should ease the strain of keeping our bases and equipment in good condition. The bill also funds many of the Service Chief's unfunded requirements, items, that are not flashy but are vital to military readiness.

Certainly the most important parts of this bill are those that address the issue of recruitment and retention. This bill provides for a pay increase, restoration of retirement benefits, and special incentive pays. The bill also begins to address some of the problems identified in the military healthcare system. Our men and women in uniform work tirelessly every day to defend the principles of this country and they deserve the benefits that are included in this legislation.

I have grave concerns, however, over the sections of this bill which affect the Department of Energy. A reorganization of the agency which manages our nation's nuclear arsenal should not be undertaken quickly or haphazardly. Yet this conference report contains language which was not considered by any committee or debated on the floor of either the House or the Senate. The ramifications of these provisions are unclear. Regrettably, I am unable to support a report which contains such provisions until I have had the opportunity to study them further.

I hope that further analysis reveals that this reorganization is workable and that ultimately, I am able to vote in favor of this report. However, at this time, I am reserving my judgment and will not sign the conference report.